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Supreme Court, U. S.
FILED
AUG. 22,
1973
MICHAEL RODAK, JR., CLERK

No. 73-167

In the

Supreme Court of The United States

OCTOBER TERM, 1973

GRAFF VENDING COMPANY, ET AL.,

Petitioners

vs.

KENNETH J. HAMPTON,
d/b/a HAMPTON VENDING SUPPLY,

Respondent.

REPLY TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JAMES L. BRANTON
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San Antonio, Texas, 78205
Attorney for Respondent

In The

Supreme Court of The United States

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As stated by the Fifth Circuit Court of Appeals, the basic facts of the case are essentially undisputed. (Appendix B-3 of Petition for Writ of Certiorari).

The Trial Court's findings of fact are framed in terms that clearly considered the case as a secondary line competition case. Hampton's position was, and the facts conclusively establish,

that he was a wholesaler and a direct competitor of Graff. When viewed on the basis of primary line competition, the Trial Court's findings of fact become erroneous.

The Fifth Circuit Court of Appeals considered Hampton to be a functional competitor of Graff, and further considered that the Trial Court had framed its findings of fact on the basis of a secondary line competition case. In view of the Appellate Court's holding that the Trial Court erred in construing it as a secondary line competition case, it would be incongruous for the Appellate Court to be bound by the Trial Court's findings of fact. In such case, the Trial Court's findings of fact would be clearly erroneous. It was not a matter of weighing the evidence or the credibility of the witnesses, but rather applying the law to essentially undisputed facts.

A reading of the Trial Court's findings of fact can only lead to the conclusion that the Trial Court made the findings on the premise that Graff's competitor was not Hampton but rather American Gum. This is clearly erroneous under the record. When viewed as a primary line competition case between Graff and Hampton, the Trial Court's findings of fact are clearly erroneous and accordingly there is no conflict between the Fifth Circuit's decision in this case and the decisions of this Honorable Court or the other Courts of Appeal, which have been cited by Petitioner.

The Petition for Writ of Certiorari should be denied for the following reasons:

(1) The Fifth Circuit Court of Appeals has in no way de-

parted from the basic rule regarding findings of fact as set out in Rule 52a of the Federal Rules of Civil Procedure.

(2) The cases cited by Petitioner on the points raised are not in conflict with the decisions of this Court or with the decisions of other Courts of Appeal.

(3) There are no special nor important reasons advanced by Petitioner which would bring himself within the scope and intent of Rule 19 of the U. S. Supreme Court Rules.

It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Carter, Callender, Branton & Gonzalez
Suite 200, 140 Main Plaza
San Antonio, Texas, 78205

By:_____
James L. Branton

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned Notary Public in and for Bexar County, Texas, on this day personally appeared JAMES L. BRANTON, who being by me duly sworn upon oath stated: I, JAMES L. BRANTON, am a member of the Bar of the Supreme Court of the United States and have been the attorney of record for Respondent in all proceedings had in the Courts below.

I further state upon oath that on the _____ day of August, 1973, I served copies of the foregoing Reply to Petition for Writ of Certiorari on the Petitioners, Graff Vending Company, Et Al., by depositing the same in the United States Mail, with first class postage prepaid, addressed to the following counsel of record in the Courts below, at the address indicated, to-wit: Mr. Earl Luna, 1002 Dallas Federal Savings Building, Dallas, Texas, 75201.

_____
James L. Branton

SUBSCRIBED and SWORN TO before me by the said JAMES L. BRANTON, this_____ day of August, 1973.

_____
Notary Public in and for Bexar
County, Texas